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FIFTY-FIRST SESSION

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SIXTH COMMITTEE
54th meeting
held on
Monday, 31 March 1997
at 3 p.m.
New York

SUMMARY RECORD OF THE 54th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (A/C.6/51/NUW/WG/L.1/Rev.1) (continued)

Article 21 (continued)

1. The CHAIRMAN said that, since delegations had reached agreement on the first three lines of article 21, paragraph 3, up to the words "control pollution of an international watercourse", they now had to decide whether to retain or delete the words "such as" along with subparagraphs (a), (b) and (c).

2. Mr. DEKKER (Netherlands), supported by Mr. CANELAS de CASTRO (Portugal), Mr. KUOKKANEN (Finland) and Mr. AL-WITRI (Iraq), recalled that during the consideration of the article in October 1996, 26 delegations had been in favour of including the examples contained in subparagraphs (a) and (b) and only 12 had been against. Some delegations had expressed the view that a framework convention should not provide examples, while others had felt that it was essential to mention a few of them, but without attributing to them any binding character, which explained the choice of the words "such as". The delegation of the Netherlands was therefore in favour of retaining the words "such as" together with paragraphs (a), (b) and (c).

3. Mr. PRANDLER (Hungary) said that he was in favour of retaining the three subparagraphs of paragraph 3. The introductory text of the paragraph was not binding in any way, since it merely exhorted the parties to consult with a view to arriving at mutually agreeable measures.

4. Ms. GAO Yanping (China) recalled the statement made by her delegation in the Drafting Committee, namely, that, while it could accept the introductory text to paragraph 3, it was firmly opposed to the inclusion of subparagraphs (a), (b) and (c).

5. Mr. RAO (India), Mr. SVIRIDOV (Russian Federation), Mr. ISKIT (Turkey), Ms. VARGAS de LOSADA (Colombia) and Mr. LOAYZA (Bolivia) restated their positions in favour of the deletion of subparagraphs (a), (b) and (c).

6. The CHAIRMAN said that the views of those delegations would be duly reflected in the summary record of the meeting.

7. Ms. BARRETT (United Kingdom) recalled that the initial text of the International Law Commission had been somewhat rigid. The Netherlands had then made a much more detailed proposal. The text proposed by the Drafting Committee was therefore the result of a compromise. It listed fewer examples and was of a less binding nature. The delegation of the United Kingdom therefore supported the compromise text.

8. Mr. PULVENIS (Venezuela), Mr. OBEIDAT (Jordan), Mr. NGUYEN QUY BINH (Viet Nam), Mr. LOIBL (Austria), Mr. KASME (Syria), and Mr. ENAYAT (Iran) expressed support for the statement made by the representative of the United Kingdom and for the retention of paragraph 3 in its entirety.

9. Ms. LADGHAM (Tunisia) said that her delegation was in favour of retaining subparagraphs (a), (b) and (c). Failing that, the Committee should revert to the International Law Commission's initial formulation.

10. The CHAIRMAN observed that a rather clear majority of delegations supported the retention of the paragraph in its current form and said that the views of those delegations which were against its inclusion would be duly reflected in the summary record of the meeting.

11. Ms. GAO Yanping (China) said that the Commission's initial text was more acceptable and wished to know whether other delegations shared the same view.

12. The CHAIRMAN said that to return to the initial text would mean disregarding all the work done by both the Working Group and the Drafting Committee.

13. Mr. GONZALEZ (France), joined by Mr. CANELAS de CASTRO (Portugal) and Mr. DEKKER (Netherlands), said that the compromise text was clearly an improvement over the Commission's draft text and was more consistent with the nature of the framework convention.

14. Mr. PRANDLER (Hungary) said that the text under consideration was in fact the result of a double compromise between the Commission's initial text and the later proposals and between the supporters and opponents of a text of a more binding nature. That was why his delegation was firmly opposed to a return to the Commission's initial text and in favour of retaining the three subparagraphs.

15. The CHAIRMAN said that, given the reactions of the various delegations, it was impossible to revert to the Commission's initial text. He therefore proposed that paragraph 3 of article 21 should be adopted ad referendum, on the understanding that the positions of the delegations which had spoken against would be duly reflected in the summary record of the meeting.

16. It was so decided.

Article 22

17. The CHAIRMAN said that article 22 contained two footnotes referring to the terms "ecosystem" and "significant harm", which would be considered at a later stage.

18. Mr. DEKKER (Netherlands) said that the Biodiversity Convention also contained an article on the introduction of alien species in which the term "ecosystem" was used. His delegation was therefore opposed to replacing the word "ecosystem" with the words "biological balance" in article 22.

19. Ms. GAO Yanping (China) said that China too was a party to the Convention on Biological Diversity, but international watercourses were a case apart with special characteristics which justified a different terminology. Otherwise article 22 of the draft convention would duplicate article 8 of the Convention on Biological Diversity, which would not be desirable.

20. Mr. SVIRIDOV (Russian Federation) asked whether the term "ecosystems" would be considered in informal consultations, as had been decided with regard to article 20.

21. The CHAIRMAN said that matters of terminology were more easily resolved in informal consultations and suggested that article 22 should be adopted ad referendum, taking account of the two reservations with regard to the terms "ecosystems" and "significant harm".

22. It was so decided.

Article 23

23. Mr. ISKIT (Turkey) said that he remained of the opinion that the wording proposed by his delegation in note 33 of the report of the Drafting Committee would be preferable, but would not insist on reopening the debate provided that his position was reflected in the record.

24. Mr. GONZALEZ (France) said that, since article 23 was worded in fairly direct language, namely "States shall ... take all measures ... that are necessary to protect and preserve the marine environment", it should not at the same time include generic descriptions such as "generally accepted international rules and standards".

25. Mr. SALINAS (Chile) endorsed the view of the French delegation and believed that the wording "rules of international law in force" would be preferable.

26. The CHAIRMAN explained that article 23 was based on the provisions of article 211, paragraph 2, of the United Nations Convention on the Law of the Sea.

27. Mr. ROSENSTOCK (Expert Consultant) said that the wording currently before the Committee was the least confusing version.

28. Ms. GAO Yanping (China) said that the differences between the text of the Drafting Committee and the wording proposed by the Turkish delegation were insignificant, but nevertheless endorsed the Turkish version which, by virtue of its concision, was not at all confusing and would help to ensure the effective implementation of the convention.

29. Mr. NGUYEN QUY BINH (Viet Nam), supported by Mr. KASME (Syrian Arab Republic), said that he would like the wording adopted by the Drafting Committee to be retained. It seemed to his delegation that the Turkish reference to rules of international law in force would not help to ensure better implementation of the provisions of the Convention.

30. Mr. RAO (India) said that he preferred the Turkish proposal because of its concision.

31. Ms. VARGAS de LOSADA (Colombia) endorsed the Turkish proposal. Nevertheless, after the words "including estuaries" she proposed adding the phrase "using for this purpose the best practicable means at their disposal and in accordance with their capabilities", which was taken from article 194, paragraph 1, of the United Nations Convention on the Law of the Sea.

32. The CHAIRMAN said that, despite the support for the Turkish proposal, most delegations preferred the Drafting Committee's wording.

33. Mr. ISKIT (Turkey), pointing to the fact that a number of delegations had supported his proposal, asked the Chairman whether it would be preferable to hold consultations on the matter or to find another means of taking into consideration the support it had received.

34. The CHAIRMAN suggested that article 23 should be adopted ad referendum with due account taken of the Turkish position, and that the article should be given further consideration if Turkey managed to garner support for its proposal from a majority of delegations.

35. It was so decided.

Article 24

36. Mr. CAFLISCH (Observer for Switzerland) withdrew the proposal to omit article 24, as reflected in footnote 34 of the report of the Drafting Committee.

37. Mr. AMARE (Ethiopia) reiterated his proposal to replace "shall enter into" by "may enter into" because, in view of the difficulties which could arise in managing international watercourses, the holding of consultations on that matter, particularly at the request of another State, should be an option and not an obligation.

38. Mr. RAO (India) asked whether article 24 duplicated article 8 regarding the general obligation to cooperate.

39. Mr. ROSENSTOCK (Expert Consultant) explained that, in the Drafting Committee's version, article 8 was confined to setting forth a general obligation, whereas article 24 was more precise and proposed implementing measures. In any case, the phrase "shall enter into" referred to consultations and not to the establishment of a joint management mechanism.

40. The CHAIRMAN, supported by Mr. KUOKKANEN (Finland), referred the representative of Ethiopia to paragraph 2 of the commentary of the International Law Commission, which stated that article 24 did not oblige States to "manage" watercourses or establish a joint organization but simply requested them to consult.

41. Mr. ISKIT (Turkey) wondered whether, in view of the explanation provided by the Expert Consultant, it might not be appropriate to review article 24 when the final version of article 8 had been adopted.

42. Mr. KASME (Syrian Arab Republic) said that he favoured retaining the text as it currently stood, but would appreciate a definition of the important concept of optimal utilization contained in paragraph 2, subparagraph (b).

43. Mr. AMARE (Ethiopia) said that, in the light of the explanations provided by the Chairman and the Expert Consultant, he was prepared to withdraw his proposal, but he reserved the right to intervene in the debate when article 8 was considered in its entirety.

44. Ms. GAO Yanping (China) said that she would be grateful for clarification on the use of the word "rational", since it was the first occurrence of that word in the draft convention. She also wished to know how it differed in meaning from the word "optimal". Moreover, she considered that, in so far as the wording of that article was close to that of article 5, it would be desirable to harmonize their respective provisions.

45. Mr. ROSENSTOCK (Expert Consultant) referred the representative of China to paragraph 3 of the commentary of the International Law Commission on article 24, which answered her question.

46. The CHAIRMAN suggested that article 24 should be adopted ad referendum, taking account of the wishes of Turkey and India that it should be reviewed following the completion of the discussion of article 8.

47. It was so decided.

48. Mr. PRANDLER (Hungary) asked whether the word "flow", as used in article 25, referred solely to the flow itself, or also to the quantity of water involved; that had been the cause of many disputes among States, and if the latter was meant, the problem of controlling that flow would arise.

49. Mr. ROSENSTOCK (Expert Consultant) referred the representative of Hungary to the commentary of the International Law Commission on article 25, which was perfectly clear: that the regulation of the flow of water courses could be necessary on the one hand, and that their flow could have harmful effects on the other, demonstrated the importance of cooperation among States. In no case did article 25 encourage the adoption of unilateral measures, and still less the adoption of measures that could harm another State.

50. Mr. SVIRIDOV (Russian Federation) noted that his reservation regarding the verb "control" had to do with the potential ambiguity of the Russian translation of that term. His delegation had submitted to the Secretariat a proposal intended to avoid the risk of such ambiguity.

51. The CHAIRMAN asked the representative of the Russian Federation if his proposal would affect versions in languages other than Russian.

52. Mr. SVIRIDOV (Russian Federation) said that he was unable to comment on that point. The Working Group could either wait until his proposal had been translated or adopt it immediately, as it did not fundamentally modify the article.

53. The CHAIRMAN suggested that article 25 should be adopted ad referendum, on the understanding that the Russian-language version would be modified in accordance with the proposal of the Russian Federation.

54. It was so decided.

Articles 26, 27 and 28

55. The CHAIRMAN suggested that articles 26, 27 and 28 should be adopted ad referendum, with the proviso that it would eventually be necessary to return to note 38 of article 26.

56. It was so decided.

Article 29

57. Ms. BARRETT (United Kingdom) recalled that during the previous session, her delegation had proposed, in document A/C.6/NUW/WG/CRP.74, a new formulation of the text of article 29. Not wishing to provoke a tedious debate, she proposed taking note of the commentary of the International Law Commission to the effect that article 29 was without prejudice to existing law, and deleting that article. Doing so would have the advantage of avoiding both redundancies and the complications arising from the United States proposal to provide for exceptions to article 33.

58. Mr. ENAYAT (Islamic Republic of Iran) said that he was in favour of retaining the text of article 29 proposed by the International Law Commission and adopted by the Drafting Committee in October. It had then been clear from the discussions of the Drafting Committee that, as explained by the International Law Commission in paragraph 1 of its commentary, article 29 simply served as a reminder of the important provisions of the principles and rules of international and domestic law concerning international watercourses and related works.

59. Mr. KASME (Syrian Arab Republic), Mr. AL-WITRI (Iraq) and Mr. AMER (Egypt) said they would like the text under discussion to be maintained unchanged. Mr. Al-Witri explained that article 29 simply set forth a rule included in the 1949 Geneva Conventions. Mr. Amer added that in view of the importance of water for survival, there was no point in confirming via article 29 that the protection extended to civilians by a well-known rule of customary international law applied to the vital resource of watercourses.

60. Mr. RAO (India) said he approved of the substance of the text under discussion, and wished to propose a purely editorial change involving the replacement of the words "international and internal armed conflicts" by "international and non-international armed conflicts", which was the expression used in a number of relevant treaties.

61. Mr. HARRIS (United States of America) said that he was not able to support the amendment proposed by India without seeking instructions from his Government. His delegation was absolutely determined that article 29 should not have the slightest effect on the substantial body of armed conflict law. In that regard, the representative of the United Kingdom had shown the prudent course by proposing to delete the article entirely.

62. Mr. AMER (Egypt) and Ms. GAO Yanping (China), also referring to the amendment proposed by the Indian delegation, expressed their preference for the adjective "non-international", which had been used in other conventions. They were nevertheless ready to be flexible and could accept the retention of the wording under discussion.

63. Mr. CAFLISCH (Observer for Switzerland) and Mr. SALINAS (Chile) said that the two adjectives in question were absolutely synonymous and that they had no preference in the matter.

64. Mr. ROSENSTOCK (Expert Consultant) recalled that, according to paragraph 2 of the commentary of the International Law Commission, the principles and rules of international law that were "applicable" in a particular case were those that were binding on the States concerned. Insofar as article 29 was without prejudice to existing law and did not create any obligation, the issue of whether or not it should be kept was more a matter of taste and political instinct than a juridical issue. With regard to the terminology used, the expression "non-international conflicts" was certainly more common than "internal conflicts", but in so far as article 29 was totally without actual juridical force, the terms in question were interchangeable.

65. Mr. WELBERTS (Germany) said that his delegation had no difficulty with article 29, but would also not oppose the deletion of that article, on condition that the summary record of the meeting mentioned the consensus on the content of the article and the fact that it merely constituted a reminder of international customary law.

66. Ms. GAO Yanping (China), Mr. CAFLISCH (Observer for Switzerland), Mr. JABER (Lebanon), Mr. SALINAS (Chile) and Mr. PASTOR RIDRUEJO (Spain) said that they favoured maintaining article 29 unchanged; although merely a simple reminder, it confirmed a very important rule of international customary law and contained well balanced wording. The observer for Switzerland warned against the temptation to palliate the absence of consensus by too-frequent references to the summary records of meetings. The representative of Chile, for his part, said that article 29 was not the only one making reference to other standards of international law. Article 23, for example, referred to generally accepted international rules and standards with regard to the protection and preservation of the marine environment.

67. Mr. HARRIS (United States of America) said that the Chairman of the Drafting Committee, in his report on the October 1996 session, had cited the clarifications provided by the International Law Commission, which made it apparent that the article neither modified nor amended existing normative instruments, and was not intended to extend the application of any instrument to States that were not parties thereto. Insofar as the useful commentary of the

International Law Commission had been approved by all, it might be useful for the summary records of the current work, and indeed the Chairman's report, to reflect that approval. In that case, his delegation would not oppose the adoption of the text under discussion, without changes. However, he reiterated that he could not accept the amendment proposed by the representative of India without first seeking instructions from his Government.

68. Mr. LAMMERS (Chairman of the Drafting Committee) pointed out that, in its proposals submitted in conference room paper A/C.6/51/NUW/WG/CRP.1, the United States of America used the term "non-international".

69. Ms. BARRET (United Kingdom) said that she too would have to consult her Government regarding the Indian proposal. She would be prepared to agree to the text as it stood if the explanation by the Chairman of the Drafting Committee referred to by the delegation of the United States of America appeared in the final report on the session.

70. Mr. RAO (India) said that the object of his proposal, which had no substantive effect, had been to avoid causing any concern to delegations regarding the fact that the traditional terminology had not been used.

71. The CHAIRMAN said that the remarks of the Chairman of the Drafting Committee, as referred to by the United States delegation, were contained in paragraph 41 of the summary record of the twenty-fourth meeting (A/C.6/51/SR.24). Since it was agreed that article 29 was merely a reminder of existing rules and principles and that many delegations believed that that reminder should appear in the Convention, he suggested that the Working Group should adopt draft article 29 ad referendum, on the understanding that that adoption would be accompanied by a statement reproducing paragraph 41 of the summary record, and that delegations which wished to do so could consult their Governments about the term "non-international".

72. It was so decided.

Articles 30 and 31

73. Articles 30 and 31 were adopted ad referendum.

Article 32

74. Mr. GONZALES (France) said that his Government's reservation expressed in note 40 was mainly intended to call attention to the changes made to the text of article 32 compared to the initial version adopted by the International Law Commission, particularly concerning the removal of the phrase "place where the injury occurred" from the factors of non-discrimination. If all delegations were fully aware of the consequences of that change, he would be prepared to withdraw the reservation.

75. Mr. CAFLISCH (Observer for Switzerland) said he failed to understand why the factor mentioned by the representative of France had been deleted from article 32. He urged all delegations to give careful consideration to the consequences of that deletion.

76. Mr. PASTRO RIDRUEJO (Spain), Mr. DEKKER (Netherlands), Mr. KASME (Syrian Arab Republic) and Mr. AL-WITRI (Iraq) said that they preferred the initial text as presented by the Commission, which mentioned the place where the injury occurred. Mr. CANCHOLA (Mexico) said that that was very important for the settlement of disputes. Mr. CANELAS de CASTRO (Portugal) said that, for practical reasons, it would be better for the object of the article to be broad rather than limited.

77. Mr. RAO (India) said that his country's reservation to article 32 was based on the fact that the principles which it covered admittedly worked well in economic systems which were integrated on a regional basis but were still evolving. Their automatic and quasi-obligatory application would in any case be unwise in regions where economic integration was less advanced, where legal systems were different, and where States had agreed on appropriate forms of recourse through bilateral agreements. A framework convention should not go into such detail or give effect to concepts which were still evolving. His delegation's reservation remained valid.

78. The CHAIRMAN said that India's reservation was duly noted. He recalled that the text submitted by the Commission had been modified by the Drafting Committee in two respects: the phrase "or place where the injury occurred" had been deleted and the expression "under its jurisdiction" had been replaced by "in its territory". He also noted that most delegations, if not all, seemed to prefer to revert to the Commission's initial text.

79. Mr. LAMMERS (Chairman of the Drafting Committee) said that the changes introduced by the Drafting Committee were intended to make the Commission's text more comprehensible, not to change its meaning.

80. Mr. SVIDIROV (Russian Federation) said that his delegation, which had proposed a different text for the draft article, was prepared to adopt the new version produced by the Drafting Committee, which was the result of long discussions, but could not agree to starting over again from scratch.

81. Ms. GAO Yanping (China) said that her delegation would have to seek new instructions from its Government if the Committee decided to revert to the initial text of the International Law Commission.

82. Ms. BARRET (United Kingdom) recalled that at the previous meeting of the Working Group, the phrase "place where the injury occurred" had been the subject of intense discussions, because under certain legal systems and with certain rules on conflicts of jurisdiction, the idea of "place" had to be taken into account; indeed, in those countries, the inclusion of that element among the factors of non-discrimination could lead to difficulties. That was true in countries with a common-law system, such as the United Kingdom. Some delegations would have preferred the greater simplicity of the Russian proposal, but in the end a compromise had been reached to retain the structure of the Commission's text, subject to the deletion of the phrase "place where the injury occurred". She believed that it would be wiser to settle for that compromise.

83. Mr. SALINAS (Chile) agreed that it might be unwise to give equal weight to nationality, place of residence and the place where the injury occurred. It

would be best either to retain the version produced by the Drafting Committee, or to find a formula which would take account of the problems expressed by the United Kingdom in that regard.

84. Mr. CAFLISCH (Observer for Switzerland) observed that the note on article 32 specified that two countries had stated their preference for the initial text as drafted by the International Law Commission. There had therefore been no agreement on the version produced by the Drafting Committee. In any case, the latter version did not exclude the first, since both were still before the Working Group.

85. Mr. GONZALES (France) said that certain delegations' apprehension was certainly understandable, but the expression "in accordance with its legal system", which also appeared in the Commission's version, should satisfy those concerns. Also, article 32 concerned the principle of non-discrimination, and could in no case impose upon a State rules for determining jurisdiction which were different from its own.

86. The CHAIRMAN noted that many delegations wished to revert to the initial text as submitted by the Commission, whereas others wished to consult their Governments on the issue. The reservations of certain delegations had been duly noted. It would be preferable to postpone any decision on article 32 and, if informal consultations did not produce another solution, to resume consideration of that article on the basis of the initial text as produced by the International Law Commission.

87. It was so decided.

The meeting rose at 5.40 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
55th meeting
held on
Tuesday, 1 April 1997
at 10 a.m.
New York

SUMMARY RECORD OF THE 55th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session of the General Assembly (continued) (A/C.6/51/NUW/WG/L.1/Rev.1 and Add.1)

First preambular paragraph

1. The CHAIRMAN said that some delegations preferred to use the expression "the non-navigational uses of", which was in square brackets, in order to specify the scope of the convention, while others wanted to make a general reference to international watercourses.

2. Mr. SVIRIDOV (Russian Federation) said that the Russian version of the first preambular paragraph, and of other articles of the convention, was occasionally imprecise or incorrect; he would provide the necessary corrections to the Secretariat. Unlike the original text, the Russian version of the first preambular paragraph referred to "States parties to the present Convention" instead of "Parties to the present Convention".

3. Mr. NUSSBAUM (Canada) said that the purpose of the paragraph was to place the drafting of the convention in the broader context of recognition of the different aspects of international watercourses that were important for the Working Group; that was why the words "the non-navigational uses of" were redundant and unnecessary and should be deleted.

4. Mr. KASME (Syrian Arab Republic) said that the words in square brackets must be retained in order to be consistent with the rest of the convention and with the work of the Working Group. In the Arabic text, the word "uses" was in square brackets and should go with the words "non-navigational", rather than with international watercourses.

5. Ms. GAO Yanping (China) said that China's position was well-known and she would not repeat it; however, her delegation firmly requested that, pursuant to the mandate set forth in the relevant General Assembly resolution and given the purposes of the convention, the words "non-navigational" should be retained and the square brackets removed. Turning to the words "and their ecosystems" which appeared in square brackets in the second half of the paragraph, China considered that they went beyond the Working Group's mandate and did not

facilitate general acceptance of the convention; it therefore insisted that they be deleted.

6. The CHAIRMAN ruled that action on the words "and their ecosystems" would be deferred until work on articles 5 and 6, which was being coordinated by the representative of Mexico, was completed, and that the current discussion would be limited to the words "the non-navigational uses of".

7. Mr. ROTKIRCH (Finland) said he would prefer to delete the first expression in square brackets. A general reference could be made in a preamble; international watercourses were important not just for non-navigational uses but in general. He supported the statement by Canada in that regard.

8. Ms. BARRETT (United Kingdom) said that the words in square brackets were unnecessary. She supported the statements by Canada and Finland.

9. Mr. PRANDLER (Hungary) recalled that Hungary had been among the original sponsors of the informal document being discussed in the Working Group. Hungary favoured making a general reference to the importance of international watercourses. In order to follow a logical sequence of ideas in the second and third preambular paragraphs, the first paragraph should refer in general terms to the importance of international watercourses.

10. Mr. ELMUFTI (Sudan) said that each paragraph of the preamble was related to the substance of the convention. He therefore agreed with China and the Syrian Arab Republic that the words "the non-navigational uses of" should be retained.

11. Mr. PHAM TRUONG GIANG (Viet Nam) said that, in accordance with the mandate provided by the relevant General Assembly resolution, the words in square brackets should be retained.

12. Mr. CHAR (India) said his delegation favoured retaining the words in square brackets in the first preambular paragraph.

13. Mr. ROSENSTOCK (Expert Consultant) said that he could not see what legal difference it would make to the interpretation or application of the articles of the convention if the words in square brackets were retained or not. The delegations which preferred a general reference and the deletion of the words in the first set of square brackets seemed to be prepared to accept the words "and their ecosystems" in the second set of square brackets, yet that would make the text unbalanced. Deleting the words in both sets of brackets would make the text more balanced, and there was no doubt that if the Working Group opted for general references in the first preambular paragraph, which was not a crucial one, it would be able to move ahead more quickly in its consideration of the convention.

14. Mr. TANZI (Italy) agreed that the first preambular paragraph did not affect the normative value of the convention. To dispel the doubts of delegations that wanted to retain the words in square brackets, he explained that the aim was not to broaden the scope of the convention but to place the convention in a broader context, as the representative of Canada had said.

15. Mr. CAFLISCH (Switzerland) said that he preferred to retain the words in square brackets.

16. Mr. CANELAS de CASTRO (Portugal) said that he would defer to the Chairman's ruling and would not raise the question of ecosystems, on which Portugal had a very firm position. With regard to the words in the first set of square brackets, the convention was for the future and it was important to show what had motivated it; he therefore thought it appropriate to make a general reference to the value of international watercourses. In that regard, he supported the statements by Canada, Hungary and the United Kingdom, among others, in favour of deleting the first phrase in square brackets.

17. Mr. SVIRIDOV (Russian Federation) said that, in accordance with the mandate established by General Assembly resolution 49/52 of 9 December 1994, the words "the non-navigational uses of" should be retained. The Working Group was answerable to the General Assembly and must act in conformity with its mandate. He supported the representatives of China, India, the Sudan, Switzerland, the Syrian Arab Republic and Viet Nam, who wanted to retain those words. The paragraph must be consistent with the title of the convention and with the content of the document drafted by the International Law Commission.

18. Ms. FAHMY (Egypt) said that she wished to retain the words in the first set of square brackets.

19. Mr. PASTOR RIDRUEJO (Spain), Mr. SALINAS (Chile) and Mr. YAHAYA (Malaysia) said that, for reasons of consistency, the words in square brackets in the first part of the paragraph should be retained.

20. Mr. AMARE (Ethiopia) associated himself with those delegations which wanted to retain the phrase "the non-navigational uses of" in order to be consistent with General Assembly resolution 49/52 and conform to the mandate contained therein.

21. Ms. VAR (Colombia) said that the preamble should be consistent with the purpose of the convention, which was to regulate the non-navigational uses of international watercourses. For that reason, she supported retention of the phrase and removal of the square brackets.

22. Mr. DEKKER (Netherlands) said that his delegation was aware of the importance of international watercourses in general and also of the importance of their non-navigational uses. Accordingly, he proposed that both concepts should be reflected in the first preambular paragraph.

23. The CHAIRMAN said that 13 delegations were in favour of retaining the phrase and seven were opposed. If the proposal by the representative of the Netherlands was acceptable, the paragraph would read: "Conscious of the importance of international watercourses and of their non-navigational uses".

24. Ms. BARRETT (United Kingdom) said that, if the proposed wording was accepted, it would be necessary to change the second part of the first paragraph, containing the words "and their ecosystems" in square brackets, since the two halves did not hang together grammatically.

25. Mr. CANELAS de CASTRO (Portugal) endorsed the Chairman's suggestion.

26. Mr. ROTKIRCH (Finland) said that the proposal by the Netherlands was sound. However, he wondered whether it could be amended to read: "Conscious of the importance of international watercourses and of the need to regulate their non-navigational uses". He was prepared to withdraw his proposal if it did not enjoy general support.

27. Mr. PULVENIS (Venezuela) fully endorsed the proposal by the Netherlands for the reasons expressed by the Canadian delegation. The Finnish proposal introduced an element which had no place in a general reference to the importance of international watercourses or to their non-navigational uses.

28. Ms. GAO Yanping (China) said that she was unable to accept the proposal by the Netherlands. The importance of international watercourses per se was obvious and could equally well be included or omitted. What should not be omitted, in her delegation's opinion, was the reference to the non-navigational uses of those watercourses, since a mandate had been received from the General Assembly to draft a convention specifically on that topic.

29. Mr. SVIRIDOV (Russian Federation) said that his delegation did not object to the proposal by the Netherlands, which it regarded as a compromise formula. It agreed to the proposal on the understanding that the resulting formula would not form part of the text of the convention itself.

30. The CHAIRMAN said he took it that the Working Group wished to adopt the text proposed by the Netherlands ad referendum.

31. It was so decided.

Second preambular paragraph

32. The CHAIRMAN said he took it that the Working Group wished to adopt the text of the second preambular paragraph ad referendum.

33. It was so decided.

Third preambular paragraph

34. Ms. FLORES (Mexico) said that Mexico had proposed the insertion of the article "the" before the word "rules", and stressed that such an amendment would not be detrimental to the contractual freedom of States as guaranteed in other articles.

35. Mr. PULVENIS (Venezuela), Mr. CANELAS de CASTRO (Portugal), Mr. PATRONAS (Greece), Mr. PASTOR RIDRUEJO (Spain) and Mr. KASME (Syrian Arab Republic) endorsed the Mexican proposal.

36. Mr. GONZALEZ (France) said that it was precisely because States' contractual freedom was guaranteed by article 3 that it was necessary to retain the indefinite article in order to keep the preamble consistent with the content of the articles.

37. Mr. ŠMEJKAL (Czech Republic) said that if the definite article was not inserted, the impression would be created that the rules were immutable, whereas the convention itself guaranteed the contractual freedom of States.

38. Ms. VAR (Colombia), Mr. ISKIT (Turkey), Mr. HABIYAREMYE (Rwanda) and Mr. PHAM TRUONG GIANG (Viet Nam) opposed the insertion of the definite article.

39. Ms. BARRETT (United Kingdom) said that inserting the definite article would create the impression that the intention was to amend all the relevant rules of international law, which was not the purpose of the convention. She believed that the original text should be retained.

40. Mr. CAFLISCH (Switzerland) and Mr. HARRIS (United States of America) endorsed the view of the United Kingdom.

41. The CHAIRMAN said he took it that the Mexican proposal did not command general approval, that the Working Group took note of the position of delegations which had spoken for and against that proposal, and that the Working Group wished to adopt the third preambular paragraph ad referendum.

42. It was so decided.

Fourth preambular paragraph

43. Mr. ISKIT (Turkey) said that his delegation had no reservations regarding the current version of the fourth preambular paragraph.

44. The CHAIRMAN said he took it that the Working Group had taken note of the fact that Turkey was withdrawing its reservation; the corresponding reference would be deleted from the text.

45. Mr. AMARE (Ethiopia) said that he wished to place on record that there were other problems which affected the viability of international watercourses and which had not been mentioned in the paragraph, such as the diversion of water from the main channel and over-use of watercourses.

46. Ms. GAO Yanping (China) said that, in general, China agreed with the content of the paragraph, but it did not fully understand the meaning of the word "viability". She asked for clarification of that term, or alternatively that another word be used in order to overcome the problem.

47. Mr. LAMMERS (Chairman of the Drafting Committee) suggested that the words "the viability of" should be deleted.

48. Mr. PULVENIS (Venezuela) said that the text had been prepared by Canada and Venezuela. He agreed that what the word "viability" and its translations referred to was not entirely clear; therefore, he supported the suggestion of the Chairman of the Drafting Committee.

49. Mr. PASTOR RIDRUEJO (Spain) pointed out that Spanish was an official language of the United Nations and that the Spanish text would be an authentic text of the convention. In view of the various interpretations that could be

given to the word "viability" in the paragraph, he also supported the suggestion of the Chairman of the Drafting Committee.

50. Mr. SALINAS (Chile), supported by Ms. GAO Yanping (China) and Mr. JAAFAR (Lebanon), said that if "viability" was deleted, the sentence would be incomplete. He suggested that "viability" should be replaced by "utilization".

51. Ms. BARRETT (United Kingdom of Great Britain and Northern Ireland) supported the suggestion of the Chairman of the Drafting Committee, as it was the most correct from the language standpoint.

52. Mr. CANELAS de CASTRO (Portugal) said that he had no objection.

53. Mr. KASME (Syrian Arab Republic) stressed that there were some problems that did not affect "viability", but rather "utilization"; for that reason it would be appropriate to delete the first word, or replace it by the second in order to be more precise.

54. Mr. PHAM TRUONG GIANG (Viet Nam) said that international watercourses were of the highest importance in the life of riparian States, and he therefore could not accept the deletion of "viability".

55. Ms. LADGHAM (Tunisia) said that she did not understand why the word "viability", which was clear and precise, should be deleted. The word "utilization" was more restrictive and not as appropriate in a preamble, which should be general in nature. Nevertheless, if there was a consensus, she could accept the deletion.

56. Ms. GAO Yanping (China) said that she also believed that deletion of "the viability of" could give rise to ambiguity, although she could accept it as a compromise.

57. The CHAIRMAN said that replacing that term would surely present problems. He noted the position of the representatives of Ethiopia and Viet Nam, who had spoken against the deletion. In any event, it was his understanding that the Working Group wished to approve the fourth preambular paragraph ad referendum, subject to the deletion of the phrase "the viability of".

58. It was so decided.

Fifth preambular paragraph

59. Mr. AMARE (Ethiopia), supported by Mr. CHAR (India) and Mr. ISKIT (Turkey), said that the preamble made no reference to the most important aspect of the convention, namely the proper utilization of international watercourses. He therefore proposed that the words "equitable and reasonable" should be inserted before "utilization".

60. The CHAIRMAN drew the attention of members of the Working Group to footnote 3 concerning whether or not to capitalize the word "framework". As for the phrase "and sustainable" in quotation marks, it would be considered after a decision was taken on paragraph 5.

61. Ms. LADGHAM (Tunisia) said that she found it strange that the term "framework Convention" was used in the paragraph under discussion but nowhere else.

62. Mr. ROSENSTOCK (Expert Adviser) said that in some ways, given that it would provide an overall framework for the conclusion of agreements between States on international watercourses, it was a framework convention but not in the usual sense of the term. Some delegations had wanted to delete the word "framework", while others wished to use a capital letter to denote its special character. A compromise had been reached and it was left in lower case.

63. Mr. KASME (Syrian Arab Republic) said that what was most important was the text of the convention and the obligations stipulated therein. The proposal to add the words "equitable and reasonable" after "utilization" was apt, but since there was no definition or standard by which to interpret those terms, problems of interpretation would arise later. The same would happen with "optimal" later in the paragraph. He proposed that a decision on the matter should be postponed until the second reading.

64. Ms. GAO Yanping (China) said that the use of capital or lower case letters made no difference, and that the basic idea of the paragraph was acceptable. However, there was a certain amount of repetition. In order to make clear the purpose of the convention, she suggested that the phrase "and the promotion of the optimal [and sustainable] utilization thereof" should be deleted.

65. Mr. HANAFI (Egypt), supported by Mr. JAAFAR (Lebanon), said that it was not appropriate to discuss principles in the preamble, much less to mention some principles selectively. The principles would be established later in the operative part of the convention.

66. Mr. PRANDLER (Hungary), supported by Mr. BOCALANDRO (Argentina), said that he could accept using "framework" with a lower-case "f", but did not believe it was absolutely necessary. He did not agree with adding the words "equitable and reasonable", since equity and reasonableness were not the only principles recognized in the convention. The text of the paragraph should be maintained, along with "and sustainable" after "optimal".

67. Mr. ISKIT (Turkey) said that a hybrid concept of a framework convention had been developed which was not the one that usually applied. Consequently, it made absolutely no difference whether or not "framework" was used.

68. Ms. BARRETT (United Kingdom of Great Britain and Northern Ireland) said that it was important to add the word "sustainable" before "utilization". She was aware, however, that the preamble should match the operative part of the text and that agreement had still not been reached on articles 5 to 7 of the convention, where a decision would have to be made on the adjectives to be used to modify "utilization". In her opinion, "framework" was superfluous. She found the sudden mention of the framework convention without any reference incongruous, and suggested that "a" should replace "the" before "framework Convention", since otherwise it would appear that reference was being made to another convention.

69. Mr. HABIYAREMYE (Rwanda) said that he agreed with the change suggested by the representative of the United Kingdom. The proposal of Ethiopia was important, since the conviction could thus be demonstrated that the convention would guarantee not only utilization, but equitable and reasonable utilization, of international watercourses.

70. The CHAIRMAN recalled that the issue was not currently under consideration, pending the outcome of consultations on article 5.

71. Mr. CANELAS de CASTRO (Portugal) and Mr. PHAM TRUONG GIANG (Viet Nam) supported the proposals of the United Kingdom and Hungary.

72. Mr. GONZALEZ (France) said that he agreed with the proposal of the United Kingdom. The current version presented stylistic problems. It was not logical to refer expressly in the preamble to the instrument being approved; it was sufficient to refer to the type of instrument, using the indefinite article.

73. Mr. SALINAS (Chile) was in favour of retaining the paragraph in its current form, incorporating the change proposed by the United Kingdom. Also, the word "framework" should be kept, since it reaffirmed the content and character of the provisions of the convention under consideration.

74. Mr. DEKKER (Netherlands), supporting the United Kingdom's proposal, said that the words "the framework Convention will ensure" should be deleted, and the paragraph should read "Expressing the conviction that the utilization, development, etc., be ensured for present and future generations."

75. Mr. HANAFY (Egypt) said that, to avoid extended discussion of an issue which had already been considered at length in the Drafting Committee, it would be wiser and more appropriate to adopt the current version of the text, since it was only a matter of a preambular paragraph whose contents would be considered again in the text of the convention. As for note 3, it had been his delegation which had proposed that the term should appear with an initial capital letter to help ensure the adoption of the text, although he would not object to accepting the term without an initial capital letter to avoid prolonging the discussion.

76. Mr. AL-WITRI (Iraq) said that the preamble should be brief and concise. However, if principles contained in other articles were to be included, it should be done exhaustively. For example, the principles of State sovereignty and of not causing harm to other States should not be overlooked.

77. Mr. LAVALLE VALDÉS (Guatemala) said that, as he had already stated in the Drafting Committee, it was not logical that the preamble should refer to the convention itself. The preamble should express the raison d'être of the convention. Consequently, he supported the United Kingdom's proposal to replace the definite article "the" with the indefinite article "a", as in note 5, which had been proposed by the Syrian Arab Republic and Ethiopia. Nonetheless, if the idea was accepted that the preamble to the convention should refer to the convention itself, the customary reference to "the present Convention" could be used, as was the case in the operative part of the convention.

78. Mr. ROTKIRCH (Finland) supported leaving the text in the form proposed by the Drafting Committee, to avoid upsetting the balance that had been achieved. Also, consideration of the issue could be postponed in order to avoid prolonging the discussion.

79. The CHAIRMAN suggested that note 3, which contained the Egyptian proposal to replace "framework" with "Framework", should be retained, and that the text should be adopted in its current form. Given that the proposals made by Ethiopia and China had given rise to objections, he suggested that those delegations' reservations should be placed on record and that the issue of the bracketed words "and sustainable" should be considered further when a decision had been reached on article 5.

80. Mr. AMARE (Ethiopia) said that his proposal was of fundamental importance, since it also referred to the operative part; moreover, it had received considerable support. If consideration of the paragraph were to be postponed, the text should include the words "[equitable and reasonable utilization]" so that it could also be adopted ad referendum.

81. The CHAIRMAN suggested that the paragraph in its current form should be approved ad referendum and that the Ethiopian proposal to include the words "equitable and reasonable utilization" should be placed on record. Since Ethiopia did not agree, he decided that consultations on the fifth preambular paragraph should continue, coordinated by the representative of Venezuela.

82. Mr. HANAFY (Egypt) recalled that usual practice had been to adopt ad referendum a text on which there had been general agreement. If a delegation had reservations, it should express them, but States should not be allowed to create difficulties in relation with a text and break the consensus. Either the work of the Working Group should be governed by a single rule, or different rules should be adopted. He failed to understand why, when there was disagreement regarding a text, the latter should be left for consideration in informal consultations.

83. The CHAIRMAN said that he usually asked delegations to show flexibility. If there were reservations, it was requested that they should not prevent adoption ad referendum. If delegations wished to have more time to consider a text, its adoption was postponed in order to continue working on it, in the hope that the postponement would not last very long.

84. Mr. HANAFY (Egypt) said he regretfully disagreed. At the previous meeting, Turkey had expressed reservations on a complete text, and it had been decided to adopt it while placing the reservations on record. The case before the Committee concerned a proposal regarding a paragraph which had not received very much support, and it had been decided that it should be left to informal consultations. If the text must be considered in informal consultations, his delegation wished to submit an official proposal on the subject.

85. The CHAIRMAN said that at the previous meeting, Turkey had been kind enough to accept his proposal. In the current case, despite asking the representative of Ethiopia not to block the adoption of the text ad referendum, he had not

obtained the requested cooperation. He therefore considered it necessary to give delegations more time before any action was taken on the matter.

86. Mr. AMARE (Ethiopia) said that it was a very controversial paragraph; there was no consensus either on the term "framework" or on his proposal. He had therefore accepted the Chairman's suggestion that informal consultations should be continued in order to achieve consensus, on the basis that it was in the interests of the adoption of the paragraph.

87. Mr. HANAFY (Egypt) asked the Chairman to provide to the coordinator of the informal consultations his delegation's amendments to the fifth preambular paragraph, which consisted of adding, in addition to the words "equitable and reasonable utilization" proposed by Ethiopia, the phrases "the obligation to cooperate" and "the obligation not to cause harm".

88. The CHAIRMAN said that it might be necessary to revert to the original text submitted by the Drafting Committee, but that he would give the coordinator of the consultations an opportunity to report on the outcome. For the moment, he wished to close the discussion on that paragraph.

89. Mr. KASME (Syrian Arab Republic) proposed that, as a compromise between Egypt and Ethiopia, the phrase "in the interest of all concerned States" should be added before the words "equitable and reasonable utilization" proposed by Ethiopia. That phrase would take account of Egypt's concern regarding the obligation not to cause harm. If his proposal was acceptable to both delegations, it could be adopted without the holding of consultations.

90. Mr. AL-WITRI (Iraq) supported the changes proposed by Egypt.

Sixth and seventh preambular paragraphs

91. The CHAIRMAN said he took it that the Working Group wished to adopt the sixth and seventh preambular paragraphs ad referendum.

92. It was so decided.

Eighth preambular paragraph

93. Mr. PULVENIS (Venezuela) said that consultations had failed to produce a consensus on the current version of the paragraph. Some delegations had opposed the inclusion in the preamble of language of the kind used in the current version. Others had offered their cooperation by proposing language intended to bring the differing positions closer together, particularly with regard to applicable international law. Some delegations had suggested that instead of such a general reference it would be possible to cite the limitations of international law with regard to the exercise of sovereignty. Others had preferred a more general formulation consisting in replacing the words "in accordance with" by "subject to" before the phrase "applicable international law", which would not substantially change the meaning of the sentence but would more clearly reflect the part played by applicable international law. The most that had been accomplished had been to define two positions: one advocating the elimination of the paragraph, and the other advocating the development of the

proposal of the observer for Switzerland, thereby obtaining a clearer phrasing that would permit consensus.

94. Mr. AL-WITRI (Iraq) said that if the paragraph was to be retained, he would like to add the following phrase: "Watercourse States shall not cause damage to other watercourse States".

95. The CHAIRMAN said that the Group did not appear to be in a position to take a decision on the eighth preambular paragraph and expressed the hope that delegations would work with the representative of Venezuela.

Ninth preambular paragraph

96. Mr. ROSENSTOCK (Expert Consultant) said that in addition to the reference to the United Nations Conference on Environment and Development, an explicit reference in the ninth preambular paragraph to the Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration) of 1972 could serve as a reminder of principle 21 of the Stockholm Declaration, which contained the elements of the eighth preambular paragraph.

97. Mr. AMARE (Ethiopia) said he wished to place on record that his delegation preferred to retain the paragraph, with a modification that his delegation wished to introduce, and that he was willing to take part in consultations in that regard.

98. The CHAIRMAN decided to postpone discussion of the ninth preambular paragraph.

Tenth preambular paragraph

99. Mr. AMARE (Ethiopia) wished to place on record that Ethiopia had a reservation regarding the tenth preambular paragraph, owing to the problems it raised for his delegation in relation to article 3.

100. The CHAIRMAN said he took it that the Working Group would take note of that reservation and that it wished to approve the tenth preambular paragraph ad referendum.

101. It was so decided.

Eleventh, twelfth and thirteenth preambular paragraphs

102. The CHAIRMAN said he took it that the Working Group wished to approve the eleventh, twelfth and thirteenth preambular paragraphs ad referendum.

103. It was so decided.

104. Mr. KASME (Syrian Arab Republic) asked if it would be possible to add to the preamble the paragraph proposed by Ethiopia and the Syrian Arab Republic which appeared in footnote 5 of document A/C.6/51/NUW/WG/L.1/Rev.1/Add.1. In the Drafting Committee, opinions had been expressed in favour and against doing

so, although there had been no general debate on the proposal; he noted that the principles of international law were intended as an aid to States.

105. Mr. LAMMERS (Chairman of the Drafting Committee) said that as two countries had been in favour and four opposed to the proposal, the Committee had decided not to include the paragraph, although it would indeed take note of the reservations of Ethiopia and the Syrian Arab Republic.

106. The CHAIRMAN suggested that the Syrian Arab Republic should consult with other delegations regarding its proposal and report to the Working Group once it had found the necessary support.

107. Mr. KASME (Syrian Arab Republic) recalled that the proposal also enjoyed the support of the United States, but agreed to deal with the issue in informal consultations.

108. The CHAIRMAN drew the attention of the members of the Working Group to draft paragraph 3 of article 3, contained in the second report, and its consequences for paragraph 5 of that article.

109. Mr. GONZALEZ (France) wished to make it clear that approval of paragraphs 3 and 5 of article 3 would depend on the final agreed formulation of the declaration on contractual freedom.

110. The CHAIRMAN recalled that delegations had agreed to accept paragraph 3 and the consequent changes to paragraph 5 of article 3 on the basis of the agreed declaration which had been read out by the Chairman of the Drafting Committee in his presentation of the articles. As a result, it would be necessary to find a way to finalize the declaration. He took it that the final clauses would present no problems.

Article 34

111. The CHAIRMAN said that it would be necessary to add the date on which the convention would be opened for signature, which was to be set by the General Assembly.

112. Mr. SVIRIDOV (Russian Federation) asked if the Secretariat had any information regarding the General Assembly's timetable for discussing the draft.

113. Mr. LEE (Committee Secretary) recalled that, in conformity with the applicable General Assembly resolutions, the Working Group had to present its report during the current session of the General Assembly, and that the General Assembly would meet in June, at the latest, to consider it. The convention would be open for signature for one year following the date of its approval by the General Assembly.

114. The CHAIRMAN took it that the Working Group wished to approve article 34 ad referendum.

115. It was so decided.

Articles 35, 36, and 37

116. Mr. AMER (Egypt) said that it would be necessary to determine in article 36 the number of ratifications needed. That was a fundamental issue which had to be studied.

117. The CHAIRMAN said he took it that despite the need to reach agreement on the number of ratifications, the Working Group wished to approve articles 35, 36 and 37 ad referendum.

118. It was so decided.

The meeting rose at 1.05 p.m.